



Appeal Decision

Site visit made on 25 July 2022

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2022

Appeal Ref: APP/C4615/C/21/3284113

248 Northway, Sedgley, Dudley DY3 3RL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Steven Cove against an enforcement notice issued by Dudley Metropolitan Borough Council.
 - The notice was issued on 17 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission and in breach of condition 5 of the Planning Permission referenced DB/70/6987, the erection of concrete gravel boards, concrete posts and fencing, forming a means of enclosure (as illustrated on images referenced image 1, image 2 and image 3 attached to this notice) to the garden area to the north of the dwelling at No.248 Northway, Dudley, DY3 3RL as illustrated in the enclosed location plan attached to this notice.
 - The requirements of the notice are 1. Permanently remove all components of the means of enclosure (illustrated in enclosed images referenced image 1, image 2 and image 3) and located to the garden area to the north of the dwelling (illustrated in the enclosed location plan) from the land including fencing, concrete gravel boards and concrete posts; and 2. Remove any debris or other waste from the land arising from works carried out in compliance with step 1.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed.

Reasons

The ground (c) appeal

2. 248 Northway is a detached dwelling that is part of a residential development that was built following the grant of planning permission BD/70/60987. Condition 5 of the planning permission is "The open plan arrangement shown for the frontages of the dwelling houses shall be kept free permanently of any type of wall, fence or other structures, other than necessary retaining walls". The fence that has been erected at the appeal property is within the open plan frontage of the dwelling and is therefore not in accordance with the restrictive condition. The fence cannot therefore be development that would otherwise be permitted under the provisions of The Town and Country Planning (General Permitted Development) Order 2015. The fence is not permitted development and planning permission has not been granted for it to be erected on the land. The ground (c) appeal thus fails.

3. The Appellant was advised by an Officer of the Council in 2013 that the fence could be erected without planning permission. This advice, made possibly because

the restrictive condition of the planning permission was not known about, was incorrect. But the Appellant did seek to confirm the advice by submitting an application for a certificate of lawfulness. This application was refused, because of the restrictive condition, and a subsequent appeal was unsuccessful. So the fence was erected in the knowledge that it would not be permitted development.

The ground (a) appeal

4. The main issue is the effect of the fence on the character of the area.

5. Northway is the main road passing through the residential estate. No. 248 has a west facing frontage to this main road and a north facing frontage to Rowena Gardens, a cul-de-sac of about 21 dwellings. The dwelling has open plan frontages on both sides and all dwellings on Rowena Gardens and on Northway in the vicinity of the appeal property also have open plan frontages, in accordance with the restrictive condition of the planning permission. The fence that has been erected at the appeal property is on the north side of the dwelling.

6. The area enclosed by the fence is part of the open plan frontage on the north side of the dwelling. The fence is a prominent and incongruous feature that interrupts the continuity of open frontages, this being particularly apparent in the view from Northway along Rowena Gardens across the frontages of dwellings on the south side of the cul-de-sac. Planting has been introduced to soften the hard appearance of the fence but this does not lessen its visually intrusive and incongruous nature and its adverse effect on the open plan character of the area.

7. The fence has a significant adverse effect on the character of the area and thus conflicts with policies ENV2 and ENV3 of the Black Country Core Strategy and policies L1 and S8 of the Dudley Borough Development Strategy.

8. The area enclosed by the fence is an extension of the rear garden on the east side of the dwelling. The extended rear garden has benefits for the Appellant and his family but this factor does not outweigh the harm that has been caused by the fence. There are similar fences at other corner properties in the wider estate but it is not known whether these are at properties that were built following the grant of the aforementioned planning permission or are permitted development. In any event, it is a fundamental planning principle that a development proposal must be considered on its individual merits.

The ground (f) appeal

9. The standard of the fence is not a relevant factor and nor is any distance rule because the fence is not permitted development, as confirmed by refusal of the Council to grant a certificate of lawfulness. There are no lesser steps to remedy the breach of planning control than the removal of the fence. The requirements of the notice are not excessive and the ground (f) appeal thus fails.

The ground (g) appeal

10. The one month period specified in the enforcement notice for compliance with the requirements, which will start on the date of issue of this decision, is reasonable. The ground (g) appeal thus fails.

John Braithwaite

Inspector